

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

DOUGLAS D. SIMMONS,

Plaintiff,

v.

**NANCY A. BERRYHILL,
Acting Commissioner of
Social Security Administration,**

Defendant.

Case No. 14-CV-328-JHP-SPS

**ORDER AFFIRMING AND ADOPTING THE REPORT AND
RECOMMENDATION OF THE UNITED STATES
MAGISTRATE JUDGE
AND GRANTING SUPPLEMENTAL REQUEST FOR FEES**

On June 1, 2016, the United States Magistrate Judge entered a Report and Recommendation in regard to Plaintiff's request for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d). The Magistrate Judge recommended that Plaintiff's Motion be granted. No party has filed any objection to the Magistrate Judge's Report and Recommendation within the time prescribed by law. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). On June 6, 2016, Plaintiff submitted a Supplemental Application for Award of Attorney's Fees (Doc. No. 30), requesting an additional \$741.00 representing 3.9 hours of attorney time incurred in preparing a reply to Defendant's EAJA Response. The Commissioner did not object to Plaintiff's supplemental request for fees.

This Court finds that the Report and Recommendation of the Magistrate Judge is supported by the record. Therefore, upon full consideration of the entire record and the issues presented herein, the Court finds and orders that the Report and Recommendation entered by the

United States Magistrate Judge on June 1, 2016, be **AFFIRMED** and **ADOPTED** by this Court as its Findings and Order.

It is **ORDERED** that Plaintiff's Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act (Doc. No. 25) is **GRANTED**. It is further **ORDERED** that Plaintiff's Supplemental Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act (Doc. No. 30) is **GRANTED**. Accordingly, the Government is ordered to pay Plaintiff's attorney's fees in the total amount of \$8,247.00.¹

It is further **ORDERED** that the award in this case is to be made payable to Plaintiff, not Plaintiff's counsel, or jointly to Plaintiff and Plaintiff's counsel, as 28 U.S.C. § 2412(a)(1) and (d)(1)(A) provide for an award of costs and attorney's fees to a "prevailing party." Further, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. §406(b)(1), she shall refund the smaller award to the plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 6th day of March, 2017.


James H. Payne
United States District Judge
Eastern District of Oklahoma

¹ This total reflects a correction to an error in hourly billing rate on an entry from March 17, 2016, which Plaintiff previously overlooked. (*See* Doc. No. 30, at 7 n.1).